

### **REMARKS**

The Applicant hereby traverses the rejections of record and requests reconsideration and withdrawal of such in view of the remarks contained herein. Claims 1-28 are pending in this application.

#### **Claim Rejections Under 35 U.S.C. § 103(a)**

Claims 1-12, 14-23, 25, 27, and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent Application No. 2003/0012143 to Chen et al. (hereinafter "Chen") in view of U.S. Patent Application No. 2004/0081166 to Stanforth et al. (hereinafter "Stanforth").

To establish a prima facie case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art cited must teach or suggest all the claim limitations. *see* M.P.E.P. § 2143. Without admitting that the second criteria is satisfied, the Applicant respectfully asserts that the Examiner's rejection fails to satisfy the first or third criteria.

#### **Lack of Motivation**

The Examiner opines that it would have been obvious "to include the sensor net of Stanforth [in the method of Chen] because sensors can monitor conditions such as environmental data and can provide that data to a central collection." (*see* Final Action, paragraph 4). As an initial matter, the Applicant respectfully points out that the Examiner's rejection does not comport with 35 U.S.C. § 103(a) or M.P.E.P. § 2143. The mere fact that references can be combined does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination. *see In re Mills*, 916 F.2d 680 (Fed. Cir. 1990); M.P.E.P. § 2143. The Examiner provides a conclusory statement that it would be obvious to modify Chen as the Examiner proposes, but does not provide any suggestion or motivation for doing so. Instead, the Examiner's conclusion of obviousness seems to be

based on improper hindsight. Nevertheless, the Applicant respectfully points out that modifying the bandwidth allocation method of Chen to have the sensor net of Stanforth would be pointless. Chen's primary goal is to predict future mobile device traffic based on past demand and allocate bandwidth accordingly. (*see for example*, Chen [0015]). Modifying Chen to monitor conditions such as environmental data and provide that data to a central collection would render Chen less efficient by making it more difficult to accurately predict future use and properly allocate bandwidth. That is, inserting Stanforth's sensor net would unduly complicate Chen's relatively straightforward method of allocating bandwidth. Moreover, monitoring conditions such as environmental data and providing that data to a central collection would not help solve the problem of proper bandwidth allocation. *see Ruiz v. A.B. Chance Co.*, 357 F.3d 1270, 1276 (Fed. Cir. 2004). Therefore, there would be no suggestion or motivation to modify Chen as the Examiner proposes. Thus, the Applicant requests reconsideration and withdrawal of the 35 U.S.C. § 103(a) rejection of record.

#### Failure to Teach or Suggest Each Claim Limitation

Claim 16 recites detecting and recording attempts to access measurement data by mobile devices. In the Current Action, the Examiner points to Chen at paragraphs [0014], [0015], & [0008] to satisfy this limitation. (*see* Final Action, paragraph 4). At paragraph [0014] Chen describes a device requesting network access and forwarding the request to a network resource manager. Clearly, merely requesting network access and forwarding the request is not the same as an attempt to access measurement data. At paragraph [0015] Chen merely describes a network resource manager that stores distribution parameters. Again, the Applicant points out that storing distribution parameters is not the same as detecting access attempts by mobile devices. At paragraph [0008] Chen merely describes a variety of devices competing for bandwidth of a network. The Applicant respectfully points out that merely competing for bandwidth has nothing to do with detecting and recording attempts to access measurement data as recited in claim 16. As shown above, Chen does not teach or suggest detecting and recording attempts to access measurement data by mobile devices as recited in claim 16. Moreover, Stanforth is not relied upon by the Examiner to teach or suggest this missing limitation. Thus, the Examiner's suggested combination fails to comport the

requirements of 35 U.S.C. § 103(a). Therefore, the Applicant respectfully requests that this 35 U.S.C. § 103(a) rejection or record be removed.

Claim 16 further recites routing measurement data within said sensor net in response to said means for calculating and said means for receiving. In the Final Action, the Examiner admits that Chen does not teach or suggest this missing limitation, but points to Stanforth, at various citations, to satisfy “transmit[ing] and receive[ing] update information and route measurement data.” (*see* Final Action, paragraph 4). At these citations, Stanforth describes data and control packets, environmental data, node update information, and the like. Even if these items could be construed as measurement data, which the Applicant does not concede as true, these citations do not teach or suggest routing measurement data in response to said means for calculating and said means for receiving. Put simply, there is no suggestion that such data is routed in response to calculating or receiving. As shown above, the combination of Chen and Stanforth does not teach or suggest routing measurement data within said sensor net in response to said means for calculating and said means for receiving as recited in claim 16. Thus, the Examiner’s suggested combination fails to comport the requirements of 35 U.S.C. § 103(a). Therefore, the Applicant respectfully requests that this 35 U.S.C. § 103(a) rejection or record be removed.

Claims 17-23 depend from claim 16 and therefore inherit all limitations of claim 16. Claims 17-23 each recite limitations not taught or suggested by the Examiner’s proposed combination. Therefore, the Applicant submits that claims 17-23 are allowable at least for the reasons set forth above with respect to claim 16.

Claim 25 recites routing measurement data using said distributed information related to said determined probabilities. In the Final Action, the Examiner admits that Chen does not teach or suggest this missing limitation, but points to Stanforth, at various citations, to satisfy “transmit[ing] and receive[ing] update information and route measurement data.” (*see* Final Action, paragraph 4). At these citations, Stanforth describes data and control packets, environmental data, node update information, and the like. Even if these items could be construed as measurement data, which the Applicant does not concede as true, these citations

do not teach or suggest routing measurement data using said distributed information related to said determined probabilities. Put simply, there is no suggestion that such data is routed using distributed information related to determined probabilities. As shown above, the combination of Chen and Stanforth does not teach or suggest routing measurement data within said sensor net in response to said means for calculating and said means for receiving as recited in claim 16. Thus, the Examiner's suggested combination fails to comport the requirements of 35 U.S.C. § 103(a). Therefore, the Applicant respectfully requests that this 35 U.S.C. § 103(a) rejection or record be removed.

Claims 27 and 28 depend from claim 25 and therefore inherit all limitations of claim 25. Claims 27 and 28 each recite limitations not taught or suggested by the Examiner's proposed combination. Therefore, the Applicant submits that claims 27 and 28 are allowable at least for the reasons set forth above with respect to claim 25.

Claims 5 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chen in view of Stanforth and further in view of U.S. Patent Application No. 2005/0122999 to Scherzer et al (hereinafter "Scherzer").

Claims 5 and 26 depend from claims 1 and 25, respectively. As shown above, each of claims 1 and 25 are allowable in view of the combination of Chen and Stanforth. Moreover, Scherzer is not relied upon to teach or suggest limitations not taught or suggested by the combination of Chen and Stanforth. Therefore, claims 5 and 26 are allowable at least for being dependent from an allowable independent claim. Thus, the Examiner's suggested combination fails to comport the requirements of 35 U.S.C. § 103(a). Therefore, the Applicant respectfully requests that this 35 U.S.C. § 103(a) rejection or record be removed.

Claims 13 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chen in view of Stanforth and further in view of U.S. Patent Application No. 2005/0122999 to Stephens et al (hereinafter "Stephens").

Claims 13 and 24 depend from claims 1 and 16, respectively. As shown above, each of claims 1 and 16 are allowable in view of the combination of Chen and Stanforth.

Moreover, Stephens is not relied upon to teach or suggest limitations not taught or suggested by the combination of Chen and Stanforth. Therefore, claims 13 and 24 are allowable at least for being dependent from an allowable independent claim. Thus, the Examiner's suggested combination fails to comport the requirements of 35 U.S.C. § 103(a). Therefore, the Applicant respectfully requests that this 35 U.S.C. § 103(a) rejection or record be removed.

**Conclusion**

In view of the remarks above, the Applicant believes the pending application is in condition for allowance. The Applicant believes no fee is due with this response. However, if a fee is due, please charge our Deposit Account No. 50-1078, under Order No. 10040054-1 from which the undersigned is authorized to draw.

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as Express Mail, Airbill No. EV482724123US in an envelope addressed to: MS AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

Date of Deposit: January 23, 2006

Typed Name: Laura Horton

Signature: Laura Horton

Respectfully submitted,

By Michael J. Fogarty, IV  
Michael J. Fogarty  
Reg. No.: 42,541

Date: January 23, 2006  
Telephone No. (214) 855-8172